IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.414 OF 2001

Roshanlal Jagannath Soni]
Aged about 26 years,]
residing at Ghungat Nagar]
Bhiwandi, Dist.Thane]
at present in Yerawada Jail]...Appellant

Vs.

State of Maharashtra]
Through Bhiwandi Town]
Police Station, Bhiwandi]
Thande.]...Respondents

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Mr.Ramesh Dube Patil for Appellant
Mr.D.P.Adsule, A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JUNE 27,2005

ORAL JUDGMENT:

1. The appellant i.e. original accused no.1 has challenged the judgment and order dated 18.12.1999 passed by the learned Addl. Sessions Judge, Thane in Sessions Case No. 59 of 1998. By the said judgment and order, the leaned Sessions Judge convicted the appellant under Section 307 of IPC

and sentenced him to suffer R.I. for seven years and to pay a fine of Rs.500/- in default R.I. for six months.

2. The prosecution case briefly stated is as under:

. The appellant-Roshanlal Jagannath Soni is the son of maternal uncle of complainant i.e. P.W.1 Munna alias Santoshkumar Ashokkumar Soni. The original accused no.2 Baccha Soni was the friend of the appellant. On 8.3.1997 the complainant went to the house of the appellant to give him a chit sent by Dinanath the brother of the appellant. At that time, the appellant asked the complainant to sleep with his wife as his wife was not begetting a child even after 7 to 8 years of marriage. However, the complainant Munna refused to do so. It is the prosecution case that thereafter the appellant took the complainant with him on the pretext of going to his friend’s house. The appellant was joined on the way by original accused no.2 Baccha. They took the complainant to an open site near Malhotra Company. After going there accused no.2 Baccha

gave fist blows to the complainant. Thereafter, the appellant assaulted the complainant Munna with knife causing him six injuries. At that time, somehow the complainant managed to escape and ran towards a petrol pump where he fell down in injured condition. Police came there and took the complainant to Indira Gandhi Memorial Hospital at Bhiwandi. There statement of the complainant came to be recorded. Thereafter, the offence came to be registered. After investigation was over, the charge sheet came to be filed and in due course, the case came to be committed to the Court of Sessions for trial.

3. Charge came to be framed against the appellant and co-accused for the offence under Section 307 read with section 34 of IPC. Both the accused pleaded not guilty to the said charge and claimed to be tried. Their defence is that of total denial. After going through the evidence adduced by the prosecution, the learned Sessions Judge convicted the accused no.2 Baccha for the offence under Section 323 and sentenced him to R.I. for one year. The learned Sessions Judge has convicted

the appellant and sentenced him as stated in para no.1 above, hence, this appeal.

4. I have heard the learned advocate for appellant and learned A.P.P. for the State. I have perused the evidence on record and the judgment and order of the learned Sessions Judge. After carefully considering the evidence on record, I have reached the conclusion that this appeal deserves to be dismissed.

5. The conviction of the appellant is mainly founded on the evidence of the injured witness i.e. P.W.1 Munna alias Santoshkumar Soni. He is the complainant in the present case. The complainant has specifically stated that on 8.3.1997 at about 5 p.m. he had gone to the house of the appellant who is the son of the maternal uncle of the complainant. The appellant Roshanlal told the complainant that he should sleep with the wife of the appellant as she was not getting any child. However, the complainant refused to do so. Thereafter, at about 10 p.m. the appellant took the complainant near Malhotra company. The accused

no.2 Baccha met them on the way. He also accompanied them. Thereafter, the appellant and Baccha took the complainant to an open ground adjoining Malhotra company. On reaching there, the accused no.2 Baccha beat the complainant with fist blows on his face. Thereafter, the appellant Roshanlal took out a knife and assaulted the complainant on his face and stomach. Somehow, the complainant rescued himself and ran away. On reaching near a petrol pump, he fell down. The persons at the petrol pump called the police. Then police came and took him to Indira Gandhi Memorial Hospital. There the statement of the complainant was recorded. Nothing has been elicited in the cross-examination of the complainant so as to disbelieve his testimony. The testimony of the complainant inspires confidence and I have no hesitation in placing reliance on the same.

6. Besides deposing about the actual assault, the complainant has specifically stated that during the assault, the belt of the complainant and the wrist watch of the appellant as also slipper of the appellant fell down at the spot. Police has seized

the articles from the spot and the complainant has identified all these articles before the Court. The testimony of the complainant on this point is corroborated by the panch witness P.W.2 Raiskhan. He is the panch witness in relation to the spot panchnama and he has deposed about the seizure of the slipper (article no.1), wrist watch (article no.2) and belt (article no.3) from the spot of incident. As stated above, the complainant has identified the belt as belonging to him and 'chappal' and wrist watch as belonging to the present appellant. This is another circumstance which goes against the appellant.

7. The evidence of the complainant is also corroborated by the medical evidence. P.W.2 Dr. Khan has examined the complainant after the incident. He has stated that he found six injuries on the body of the complainant. They are incised wound on the abdomen on right side, incised wound on the abdomen on the left side, three incised wounds on the face near the chin and multiple incised wounds on the left cheek. Dr.Khan has stated that all the injuries were possible with

knife. He has specifically stated that the injury nos. 1 to 3 i.e. incised wounds on the abdomen and on the face below mandible, were grievous in nature and that the injuries found on the complainant were sufficient to cause death in the ordinary course of nature.

8. Thus, looking to the evidence on record, it can be said that the prosecution has proved its case that the appellant committed an offence under Section 307 of IPC. In this view of the matter, no fault can be found with the judgment and order of the Sessions Judge in convicting and sentencing the appellant under Section 307 of IPC. Hence, I find no merit in this appeal and the same is dismissed.

[V.K.TAHILRAMANI,J.]